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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--x

JOHN EMANUELE d/b/a ZERO BEDROOM APARTMENT,

Plaintiff,

v.

AERIN, LLC,

Defendant.

--x

Index No.: 16-cv-5267

COMPLAINT AND JURY DEMAND FOR DAMAGES FOR COPYRIGHT INFRINGEMENT

Plaintiff JOHN EMANUELE d/b/a ZERO BEDROOM APARTMENT, by and through his attorneys at GARBARINI FITZGERALD P.C., brings this Complaint and Jury Demand against defendant AERIN, LLC based on copyright infringement pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101 *et seq*. (the "Copyright Act" or "Act").

PARTIES

1. Plaintiff JOHN EMANUELE ("EMANUELE") is a professional musician and a resident of Queens, New York.

2. Upon information and belief, AERIN, LLC. is a limited liability company duly organized under the laws of New York, with a primary office located at 595 Madison Avenue, 5th Floor New York, NY 10022.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is based upon 28 U.S.C. § 1331 in that this controversy arises under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.).

4. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

5. The subject copyrighted recording titled "*1973*" was registered with the United States Copyright Office prior to the infringement by defendant.

6. Personal jurisdiction over defendant is proper in this Court pursuant to CPLR § 302 (New York's long-arm statute) due to its continuous and systematic business activities within New York as described below. Defendant also maintains an office in New York.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and (c).

8. A Copy of the certificate issued by the U.S. Copyright Office is annexed hereto respectively as **Exhibit 1**.

FACTS

9. Plaintiff John Emanuele is a professional musician. Plaintiff releases his recordings to the public under the name "Zero Bedroom Apartment."

10. Sometime in or around September 2013, AERIN, LLC produced an advertisement which can be found at: https://www.youtube.com/watch?v=UNJ4S-teJ1U (the "Infringing Advertisement").

11. Defendant AERIN synchronized plaintiff Emanuele's copyrighted recording, "1973" to the Infringing advertisement and then reproduced and distributed the Infringing Advertisement.

12. On July 28, 2016, AERIN, was notified by plaintiff that there was no license. AERIN elected to ignore the notice, and continued to distribute the Infringing Advertisement through its YouTube channel. See **Exhibit 2**.

13. On September 9, 2016, defendant was contacted again, this time by counsel to the plaintiff. See **Exhibit 3**.

14. Again, AERIN took no corrective action.

15. AERIN elected to ignore both notices, and continue to reproduce, synchronize, and distribute plaintiff's copyrighted recording without a license in violation of the exclusive right of plaintiff to exploit his copyrighted work.

COUNT I
COPYRIGHT INFRINGEMENT

16. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

17. As a general proposition, a copyright confers on the owner the exclusive right to reproduce, synchronize, and distribute his/her copyrighted work.

18. Absent a license from the copyright owner, which the owner is free to grant or deny, reproduction, synchronization, and distribution of the copyrighted work by another constitutes copyright infringement.

19. Defendant here has, without license from plaintiff, reproduced, publicly distributed, and synchronized plaintiff's copyrighted composition without a license.

20. It cannot be disputed that plaintiff has a valid, registered copyright, and that defendant reproduced, distributed, and synchronized plaintiff's recording, thus infringing plaintiff's rights under the Copyright Act. Irreparable injury is presumed here as plaintiff has established a prima facie case of copyright infringement.

21. Even after defendant was put on notice that it had no license or authority, defendant elected to continue to synchronize, reproduce, and distribute plaintiff's copyrighted recording.

22. The synchronization, distribution, and reproduction of the copyrighted recording violates 17 U.S.C. § 106, and is actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

23. Defendant's predatory conduct was clearly intentional within the meaning of 504(c)(2) for purposes of enhancing statutory damages. Defendant knew its actions constituted an infringement or at the very least acted with reckless disregard to plaintiff's rights.

24. Defendant's knowledge and intent may be inferred from its conduct including the reckless disregard of plaintiffs' right (rather than actual knowledge of infringement), which suffices to warrant award of the enhanced damages.

25. Defendant continued its synchronization, reproduction, and distribution for months after notice which is clearly intentional as defined by Section 505(c) of the Act.

26. As a direct and proximate result of defendant's infringement, plaintiff has incurred actual damages in the form of license fees while defendant used plaintiff's copyrighted recording for its own commercial gain in an amount that will be determined at trial. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to $150,000, but not less than $30,000, plus attorneys' fees, costs, and pre and post judgment interest.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendant as follows:

A. for plaintiff's actual damages and defendant's profits proximately related to the Infringing Advertisement;

B. statutory damages in the amount of $150,000, but in no case less than $30,000 pursuant to 17 U.S.C. § 504(c), if plaintiff so elects;

C. an award to plaintiff of its attorneys' fees, costs, and disbursements in this action pursuant to 17 U.S.C. § 505 and 15 U.S.C. § 1117; and,

D. for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: September 22, 2016

GARBARINI FITZGERALD P.C.

By: Richard M. Garbarini
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Exhibit 1

Certificate of Registration

SEAL OF THE UNITED STATES COPYRIGHT OFFICE 1870

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number

SR 677-965

Effective date of registration:

May 27, 2011

Title

Title of Work: Zero Bedroom Apartment Works 2005-2010 (Releases: Filmmuzik 1, Ambient Works v1, Filmmuzik 2, The Archive)

Contents Titles: Blurry Morning Glance

Epic Loop

1973

The Start

Breznev

Miracle Rays

Reverso

Float

Fire and Ice

New Gods

Cloud Dance

Ethereal Plane

Amorphis

The End of Time

Morning Jewel

Sub Hydro

Siberia

Ghostpark

Ethica

Twilight Drive

Low Countries

Murder

Life In The Mine

Chillin

1986

Cosmos

Home

In Clouds

Optics

The Next Life

Sound Design 1

Blurry Morning Glance Three

Long Sky

1973 v2

1973 v3

Back Soon

Bleak Age

Blurry Morning Glance Two

Brisk Blizzard

Car Loop

Flee

Floating Forward

Following

Future On Fire

Future Sounds

Gaelic

Gloomy Bizarre

Hallway View

In The Rain

Intrigue

Lone Survivor

Mystery

New Heights

Open

Pastoral Landscape

Pensive Loops

Rebirth

Runners Hill

Sad Rocket

Seasons

Serene

Seven Seconds To Midnight

Sleepy Eye

0000SR00006779650201

The Coldest Night

The End of Time Two

Toys

Completion/Publication

Year of Completion: 2011

Date of 1st Publication: February 6, 2011 **Nation of 1st Publication:** United States

Author

- **Author:** John Keith Emanuele

Author Created: sound recording, performance, production, music

Citizen of: United States **Domiciled in:** United States

Year Born: 1984

Copyright claimant

Copyright Claimant: John Keith Emanuele, dba Zero Bedroom Music

75-10 197 Street, 2nd Floor, Flushing, NY, 11366, United States

Rights and Permissions

Organization Name: Zero Bedroom Music

Name: John Keith Emanuele

Email: johnemanuele@gmail.com **Telephone:** 646-552-3011

Address: 75-10 197 Street

2nd Floor

Flushing, NY 11366 United States

Certification

Name: John Keith Emanuele

Date: May 27, 2011

Registration #: SR0000677965

Service Request #: 1-611129851

0000SR00006779650202

Zero Bedroom Music
John Keith Emanuele
75-10 197 Street
2nd Floor
Flushing, NY 11366 United States

Exhibit 2

Gmail

zero bedroom music <zerobedroommusic@gmail.com>

No Record of License for Song Used in your Online Video

1 message

zero bedroom music <zerobedroommusic@gmail.com> Thu, Jul 28, 2016 at 10:13 AM
To: inquiries@aerin.com

To Whom it May Concern,
I'm with the licensing division of Zero Bedroom Music.

We've been informed that you have a copyrighted song, '1973' by the artist Zero Bedroom Apartment in the following online video.

https://www.youtube.com/watch?v=UNJ4S-teJ1U

As soon as possible, please forward us your licensing documentation for the use of this track.

We've gone through all of our records thoroughly and do not see licenses issued to your person or business entity for the use of this song.

Use of music without a license at any point violates copyright law. The video has been archived and screenshots taken, so simply deleting the video at this point will not serve any purpose.

Please do not ignore this email, as all emails not replied to will be followed up upon down the line by our legal counsel.

We greatly apologize if this email is in error and look forward to resolving this matter.

Best,
John Emanuele
Zero Bedroom Music

Exhibit 3

GF

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www.garbarinilaw.com

September 8, 2016

VIA EMAIL
and CERTIFIED MAIL

AERIN, LLC
595 Madison Avenue, 5th Floor
New York, NY 10022

Re: Emanuele adv. AERIN, LLC

AERIN:

I represent Mr. John Emanuele, an artist that performs under the name Zero Bedroom Apartment. AERIN, LLC produced a video, located at https://www.youtube.com/watch?v=UNJ4S-teJ1U, which synchronized Mr. Emanuele's copyrighted song 1973. (Registration attached as **Exhibit 1**). On July 28, 2016, AERIN was notified by my client that there was no license for this use. See **Exhibit 2**. AERIN neither took corrective action, and remove the offending video, or, in the alternative, produce a synchronization license. Instead, AERIN elected to ignore the notice, and continue to infringe my client's exclusive rights to exploit his copyrighted work.

AERIN is being afforded this final chance to produce a license. If it does not have one, this is a clear intentional infringement under the Copyright Act, and entitles my client to statutory damages of up to $150,000, but in no case lower than $30,000 pursuant to 17 U.S.C. § 504(c)(2).

If AERIN is interested in resolving this pre-litigation, send a license for this use to me at rgarbarini@garbarinilaw.com. If there is no license, Emanuele will accept $75,000 in return for a license and release. If AERIN elects to ignore this correspondence, a complaint will be filed in the Federal Court for the Eastern District of New York on September 13, 2016.

GARBARINI FITZGERALD P.C.

By: Richard M. Garbarini
Richard M. Garbarini